



WEB COPY



Civil Miscellaneous Appeal No.1473 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1473 of 2024
and CMP Nos.12851 and 12852 of 2024

Mary Jerome Faustine @ S.Jerome

... Appellant

Vs.

1. The Superintendent of Police (HQ)
Puducherry

2. Mrs.Anthonate Adikala Marie
D/o.Dourez Souce Iroudayamarie
No.20, 1st Main Road,
Bharathidasan Nagar,
Mudaliarpet,
Puducherry – 605 004

... Respondents

Civil Miscellaneous Appeal filed under Section 299 and 384 of Indian Succession Act against the order dated 09.06.2023 passed in Civil Review Petition No.3 of 2022 on the file of the Principal District Judge, Puducherry confirming the order dated 06.02.2020 passed in S.O.P.No.8 of 2019 on the file of Principal District Judge, Puducherry.

For Appellant : Mr.Prakash Adiapadam

For Respondents : Mr. V.Vasanthakumar
Additional Government Pleader for R1



WEB COPY



Civil Miscellaneous Appeal No.1473 of 2024

JUDGMENT

The present appeal has been filed against the order passed by the learned Principal District Judge, Puducherry, in Civil Review Petition No.3 of 2022 dated 09.06.2023, dismissing the review petition filed in S.O.P.No.8 of 2019.

2. The appellant filed a petition under Section 372 of the Indian Succession Act before the Principal District Judge, Puducherry for issuance of a succession certificate to enable the applicant to get all the retirement benefits of the deceased Government servant, who was working in the Police Department at Puducherry and who was the younger brother of the appellant.

3. The case of the appellant is that his younger brother was working as a police constable in the Police department. He died on 13.09.2008 while he was in service. During his life time, he had nominated the appellant as the nominee to receive all his service benefits.



The further case of the appellant is that the 2nd respondent is the daughter of the deceased through his divorced wife and that the wife after divorce got remarried and she also got the custody of the 2nd respondent through an order passed by the Family Court at Puducherry in O.P.No.35 of 2000 dated 03.05.2000. Thus, the divorced wife got the parental authority and custody over the 2nd respondent and thereafter, she took her and settled down in France along with her husband married after the divorce.

4. The 2nd respondent did not contest the case and remained *exparte*. The 1st respondent viz., the Superintendent of Police also left it to the Court to pass an appropriate order, which will be complied by the 1st respondent.

5. The Principal District Judge, Puducherry, came to a conclusion that the 2nd respondent is the daughter of the deceased and is the legal heir of the deceased and therefore, the Court below proceeded to issue succession certificate in favour of the 2nd respondent in order to enable the 2nd respondent to receive all the retirement benefits of the deceased.



WEB COPY

6. The appellant filed a review petition on the ground that the appellant had preferred the petition for getting the succession certificate since he was the nominee appointed by the deceased and whereas, the Court below has granted the succession certificate in favour of the 2nd respondent. This review petition came to be dismissed by the Court below on the ground that there was no error apparent on the face of the order.

7. The appellant aggrieved by the above order passed by the learned Principal District Judge, Puducherry, filed the present appeal before this Court.

8. Heard Mr.Prakash Adiapadam, learned counsel for the appellant and Mr.V.Vasantha Kumar, learned counsel for the 1st respondent. The 2nd respondent did not contest this case right through and remained *exparte*. The 2nd respondent has already gone along with the mother after the mother obtained the parental authority and custody.



WEB COPY

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. It is seen from records that the deceased John Marie Xavier was working in the police department and he had nominated the appellant as the nominee to receive the service benefits after his life time. This nomination was given on 20.12.1982. Thereafter, the said John Marie Xavier married one Dourez Souce Iroudayamarie and through the wedlock, the second respondent was born. The marriage was dissolved by the competent Court by judgment dated 02.02.1996. Thereafter, she married another person on 19.08.1996. The said Dourez Souce Iroudayamarie also filed MOP No.117 of 1997 before the Family Court at Puducherry to grant her to exercise parental authority and custody of the second respondent. The Family Court came to a conclusion that Dourez Souce Iroudayamarie was the natural guardian, who was in care and custody of the minor daughter and therefore, this petition was also allowed. Thereafter, there was absolutely no relationship between the deceased and the second respondent. John Marie Xavier died on



WEB COPY

13.09.2008. Thereafter, the appellant, who is the brother and the nominee, made a representation to settle the service benefits. The first respondent was insisting that the appellant must get a succession certificate from the competent Court. The Court below has rejected the petition filed by the appellant on the ground that the appellant cannot receive the service benefits since the second respondent is the daughter of the deceased John Marie Xavier. Aggrieved by the same, the present appeal has been filed before this Court.

11. In the considered view of this Court, the appellant was appointed as the nominee for receiving the service benefits of the deceased, who is none other than the younger brother of the appellant. There is no dispute with regard to the same. The 1st respondent could have paid the entire service benefits to the appellant based on such nomination. However, the 1st respondent thought it fit to direct the appellant to get a succession certificate. Insofar as the grant of succession certificate is concerned, it is only for the limited purpose of receiving the service benefits from the 1st respondent. The Court below was not deciding an *interse* dispute between the appellant and the 2nd



WEB COPY

respondent in this case. If the 2nd respondent had come before the Court and contested the case, then, the Court below could not have granted any succession certificate to the appellant. The succession certificate was sought for only based on the nomination made by the deceased in favour of the appellant. Therefore, considering such limited purpose, the succession certificate ought to have been granted in favour of the appellant. The succession certificate is only to enable the 1st respondent to handover the service benefits. Thereafter, if really the 2nd respondent is interested in making any claim, the same has to be done in accordance with law before the competent Court.

12. In the light of the above discussion and more particularly, considering the fact that the 2nd respondent has already gone out of the scene long back after her mother obtained the parental authority and custody in the year 2000 and she had settled in france, no useful purpose will be served in granting the succession certificate in favour of the 2nd respondent.

13. The result of the foregoing discussion is that the order



Civil Miscellaneous Appeal No.1473 of 2024

passed by the learned Principal District Judge, Puducherry in S.O.P.No.8 of 2019 dated 06.02.2020 is hereby set-aside. The succession certificate shall be issued in favour of the appellant within a period of four weeks from the date of receipt of a copy of this order by the Court below. On receipt of the same, the appellant is entitled to submit the succession certificate before the 1st respondent and receive the retirement benefits of the deceased.

14. In the result, this Civil Miscellaneous appeal is allowed in the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

23.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

rka



WEB COPY



Civil Miscellaneous Appeal No.1473 of 2024

N.ANAND VENKATESH.,J
rka

To,
Principal District Judge, Puducherry

Civil Miscellaneous Appeal No.1473 of 2024

23.07.2024